

*THE DISTRICT OF COLUMBIA*

*DRAFT*

*LOW INCOME HOUSING TAX CREDIT*

*ALLOCATION PLAN*

*Revised As Of October 23, 2003*

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## INTRODUCTION

The Tax Reform Act of 1986 established the federal Low Income Housing Tax Credit (“LIHTC”). The LIHTC program was subsequently made permanent by the Revenue Reconciliation Act of 1993. The program was created to encourage the private sector to invest in the construction and rehabilitation of housing for low and moderate income individuals and families. Project owner/investors claim the LIHTC on their federal income tax return’s each year for a period of ten years. However, projects generally must meet certain requirements for low income use for thirty years. The Mayor delegated the authority and assigned the responsibility of administering the LIHTC program to the District of Columbia Department of Housing and Community Development (“DHCD”) in Mayor’s Order 87-72.

## ALLOCATION PLAN

Federal law requires jurisdictions to adopt a plan to allocate the LIHTC to projects based on federally mandated requirements and priority needs determined by the District of Columbia (“District”). The District’s Low Income Housing Tax Credit Allocation Plan (the “Plan”) is intended to ensure the selection of only those projects that comply with federal law and address, on a priority basis, the housing needs of the District. The LIHTC is competitively awarded to eligible housing projects based on the selection criteria set forth in the DHCD Low Income Housing Tax Credit Program Guidelines and Procedures, and the annual Public Notice of the Availability of LIHTC (“Notice”). The Notice shall articulate in detail the housing needs, targeted locations, specific program goals, and ranking criteria for the subject allocation period and include the application with required exhibits.

These allocation procedures shall govern the award of the District’s LIHTC and shall apply to residential rental housing financed by: (1) private lenders; (2) taxable bonds; and (3) local or federal loan programs. These procedures shall automatically renew themselves annually, unless amended or replaced. The Mayor of the District of Columbia has the sole authority to amend or replace the Plan.

Projects financed with certain tax-exempt bonds may be eligible to receive a four percent 4% present-value LIHTC without regard to the District’s Per-Capita Credit ceiling or the above mentioned selective criteria. Although tax-exempt bond financed projects need not compete for an allocation through the competitive process, they shall be evaluated against the threshold criteria established in Section 42 of the Internal Revenue Code (IRC) and they must comply with the monitoring procedures contained in the District of Columbia, Department of Housing and Community Development’s Low Income Housing Tax Credit Program Compliance Manual (CM), which is incorporated by reference herein.

**Determining the LIHTC** - The DHCD shall evaluate all projects for the amount of Per-Capita Credit to be allocated. A project's maximum reservation of LIHTC shall be the lesser of: (1) the amount necessary to create financial feasibility and economic viability; or, (2) the amount that is allowable in accordance with qualified basis eligibility rules as stated in Section 42 of the Internal Revenue Code ("IRC"). In order to maximize the efficient use of the District's resources, DHCD encourages the leveraging of private resources.

**Tax Credit Amount Available**. - The amount of Tax Credits available for the District to allocate in each calendar year reflects the sum of the amounts allowed as the State Tax Credit Ceiling under IRC Section 42(h)(3)(C). This amount may be increased by returned Tax Credits from prior years, Tax Credits allocated to the District from the national Tax Credit pool or by new legislation increasing the amount of Tax Credits distributed to each state. Any unallocated or Recovered Tax Credits or a combination of both may be awarded as part of the current year cycle(s) of awards for Tax Credits, or may be carried over to the next year's cycle(s) of awards at the discretion of the DHCD.

**Application Process** - Applications will be accepted and reviewed during one or more scheduled rounds of competition. DHCD will provide public notice with regards to the schedule of the competitive round(s) for the reservation of LIHTC. The Notice will provide application deadline dates. DHCD has established a goal to announce competition results within 60 to 90 days of the application deadline dates. Only projects that meet the threshold requirements set forth in the Plan will be rated and ranked in the competitive round(s).

**Eligible Sponsors** - Profit-motivated and non-profit sponsors are eligible to apply for a reservation of LIHTC to fund residential rental property located in the District of Columbia.

**Tax-Exempt Financed Projects** - Projects financed with the proceeds of local or District of Columbia issued tax-exempt bonds may be eligible to receive four percent (4%) present-value LIHTC over and above the District's Per-Capita Credit Ceiling. When 50% or more of the development and acquisition costs are financed with the proceeds of these tax-exempt bonds, sponsors may be eligible for four percent (4%) present-value LIHTC on the entire qualified basis of their projects. If less than 50% of costs are financed with the proceeds of these tax-exempt bonds, sponsors may be eligible to receive LIHTC on the portion of the qualified basis financed with the bonds.

To receive LIHTC for projects financed with qualified tax-exempt bonds, sponsors must first apply to the District's Housing Finance Agency (DCHFA). Upon request from DCHFA or the sponsor and upon receipt of an opinion from the sponsor's tax attorney or accountant that the project complies with requirements of the Code, DHCD will issue Internal Revenue Service (the "IRS") Form(s) 8609 with respect to the project. The IRS form 8609 is the document that allocates LIHTC. These projects shall also be required to comply with the monitoring provisions of this plan.

DCHFAs shall have the responsibility of determining the amount of LIHTC necessary to create financial feasibility for the project. Consistent with an inter-agency agreement DHCD will not duplicate the DCHFA underwriting of tax-exempt bonds projects and will accept the DCHFA determination of the financial feasibility.

## **FEES**

**Application Fee** - All profit-motivated applicants must pay a nonrefundable fee of \$500 for each application requesting a reservation of LIHTC. All non-profit applicants must pay a nonrefundable fee of \$200 for each application requesting a reservation of LIHTC. The fee must be paid at the time the application is submitted and is retained regardless of the outcome of the application process. Projects failing to receive an award of LIHTC may reapply in another year; however, a new application fee will be required.

**Reservation Fee** - As set forth below, **a fee is due within ten business days of the date of the reservation of LIHTC**. A sponsor's failure to pay the fee within the specified period may result in the cancellation of the reservation. DHCD shall not issue an allocation of LIHTC unless all Reservation Fees have been paid. The Reservation Fee is not refundable under any circumstance.

Profit-motivated sponsors shall pay a reservation fee equivalent to two percent (2%) of the **annual** LIHTC reserved for the project. Non-profit sponsors must a reservation fee equivalent to pay to one percent (1%) of the **annual** LIHTC reserved for the project.

**Allocation Fee** - When the project is placed in service, all sponsors must pay an Allocation Fee equivalent to one percent (1%) of the **annual** LIHTC allocated to the project. All fees must be paid prior to issuance of the IRS Form(s) 8609 which are necessary to claim the tax credit.

Projects that have 50% or more of the development and acquisition costs financed with the proceeds of DCHFA-issued tax-exempt bonds are exempt from Reservation and Allocation fees.

**Extension Fee** - Sponsors unable to meet the requirements to receive an allocation of LIHTC within the period required in their reservation may request an extension of the reservation. All sponsors must pay a nonrefundable fee of \$1,000 for each project for which an extension of the reservation is requested. **The fee must be paid at the time the extension is requested and will be refunded only in the event that the request for an extension is denied.**

**Monitoring Fee** – All projects will pay an annual monitoring fee of \$25.00 per unit. The amount will be assessed January 1 of each year and is due not later than February 1 of the same calendar year.

***Exhibit 1-Illustrates the current and proposed DHCD LIHTC Fee Schedule along with the DC HFA LIHTC Fee Schedule.***

## LIHTC SET ASIDE

**Non-profit Set-aside** - As required by federal law, no more than 90% of the District's annual LIHTC ceiling may be allocated to sponsors other than qualified non-profit sponsors. As such, 10% of the Per-Capita Credit ceiling is set-aside exclusively for projects developed by qualified non-profit sponsors. To be eligible to receive a reservation from this set-aside, sponsors must show that they will meet the following federal requirements throughout the compliance period: (1) qualified sponsors must be exempt from tax under Section 501(c)(3) or 501(c)(4) of the IRC or be a wholly owned subsidiary of a qualified non-profit organization; (2) they must have as one of their tax-exempt purposes the development of low income housing; (3) they must own an interest in the project either directly or through a partnership; (4) they must materially participate in the development and operation of the project through regular, continuous and substantial actions; and (5) they must not be affiliated with or controlled by a profit-motivated organization.

Reservations from the non-profit set-aside are permitted under circumstances where a partnership between non-profit and profit-motivated entities exists, only if each organization is independently controlled and operated and the non-profit materially participates in the development and operations of the project.

## THRESHOLD CRITERIA

To be rated and ranked during any round of competition, projects must meet all of the following threshold criteria. These requirements are intended to eliminate projects that do not meet basic program guidelines and to ensure that LIHTC is reserved for projects that are viable and in compliance with District and federal requirements. Projects that do not meet the threshold criteria will not be rated and ranked during competitive rounds.

**Federal Requirements for Eligibility** - The following criteria are federal requirements related to tenant incomes, maximum rent levels and low income occupancy with respect to an eligible LIHTC project.

**Minimum Occupancy Restrictions** - At a minimum, sponsors must elect that either: 20% of the units in the project must be rented to families with incomes at 50% or less of area median income; or 40% of the units in the projects be rented to families with incomes at 60% or less of the area median income.

**Maximum Rent Levels** - Low income units in the project must be rent restricted as defined by Section 42(g)(2) of the IRC for a period of thirty years. (The compliance period of 15 years and an extended use period of 15 years.) Prior to the issuance of the Form 8609 by the District the Developer must provide evidence of that the restrictive covenants have been recorded.

**Eligible Projects** - Projects must involve new construction, acquisition, or rehabilitation. For projects involving rehabilitation, the rehabilitation costs must be the greater of \$3,000 per unit or

10% of the adjusted basis. This minimum rehabilitation requirement must be met within two years of the allocation of LIHTC. If applying for acquisition credit, projects must not have been placed in service or undergone substantial rehabilitation within the previous 10 years. Exceptions to the 10-year rule are provided for projects with federal or other mortgages that are subject to prepayment provisions and for buildings acquired from failed financial institutions. In these cases, waivers from the IRS will be required before the LIHTC is allocated. A request for a waiver from the IRS will be required to meet the threshold criteria. The appropriate form will be available from DHCD.

In addition to these criteria, projects must fully comply with all federal requirements as set forth in Section 42 of the IRS Code. Applications for projects that do not meet these criteria will be returned to the applicant without ranking.

**District of Columbia Eligibility Requirements** - The following criteria are the District of Columbia's requirements for eligibility. Generally, if any of the following criteria are not met, projects will not be ranked.

**Development Team** - (1) Members of the development team must certify that they are free of suspension or debarment from participating in any government programs, both local and federal. (2) With respect to substantial liens and/or judgments and/or foreclosures and/or bankruptcies, applicants must have a history that is acceptable to DHCD. (3) Applicants must be in compliance with any existing prior agreements with DHCD.

**The Application** - The LIHTC Application must be fully completed and all required attachments must be included. The specific form and required exhibits will be included in the annual Notice.

**Site Control Requirements** - Satisfactory evidence of site control of the project must be provided. Satisfactory evidence of site control includes: the presentation of deeds, contracts of sale, leases with purchase options or other forms acceptable to the DHCD.

## **SELECTIVE CRITERIA**

Once projects meet the threshold requirements, they will be rated and ranked vis-a-vis the selective criteria which have been established in accordance with federal law and the District's housing priorities and needs. Each application will be evaluated, awarded points based on the criteria and then ranked against the other projects competing in the round. The selection criteria are published in the attached DHCD Low Income Housing Tax Credit Program Guidelines and Procedures Manual (GPM), which is incorporated by reference herein. The selective criteria may be revised, from time to time, to reflect the changing housing needs of the District and will be articulated in the Notice and GPM. GPM's are included as part of the application packet.



## UNDERWRITING REVIEW

Projects meeting threshold requirements that are rated and ranked against the selective criteria will also be evaluated to determine how much LIHTC is needed. DHCD will calculate the maximum LIHTC for which projects are eligible. However, DHCD, in accordance with Section 42 of the Code, shall allocate the minimum amount of LIHTC necessary to create a financial feasibility and economic viability for the project.

This determination is made by employing commonly accepted underwriting methodology (consistent with the GPM) and occurs at three points in the process: (1) at the time of application; (2) at the time of reservation; and (3) at the time the project is placed in service.

**Limitation on Fees** - DHCD will limit fees in the development budget according to the standards established in the GPM.

**LIHTC Equity Projections** - DHCD will evaluate the reasonableness of the proposed syndication value of the LIHTC based on current market conditions. Evaluation of the market will be based on current syndication proposals and information on the status of funds from various national syndication firms.

**Special Target Areas** - Federal law permits jurisdictions to reserve a greater amount of LIHTC than the maximum normally allowed for projects in certain areas. These areas are known as Qualified Census Tracts (QCT) and Difficult Development Areas. QCT's are areas in which 50% of the population has incomes of less than 60% of the area median. A listing of QCT's for the District is available at DHCD. Difficult Development Areas (DDA) are those areas designated by HUD because of high construction, land and utility costs relative to area median income. The eligible basis for projects in these areas may be increased by as much as 30%. A higher LIHTC may be reserved where federal law permits and where the feasibility analysis indicates the need for the additional LIHTC.

**Subsidy Layering Reviews** - HUD is required to undertake subsidy layering reviews of projects to ensure that sponsors do not receive windfall profits by combining direct HUD housing assistance with other forms of federal, District or local assistance. For projects that combine direct HUD housing assistance with the LIHTC, HUD has delegated the subsidy layering review to DHCD. Projects receiving low interest financing under the HOME Investment Partnerships Program will not be treated as federally subsidized if at least 40% of the units are rented to families with incomes of 50% of the area median or less. However, these projects are not eligible for the 30% increase in the eligible basis.

HUD has issued guidelines and administrative procedures that must be followed when undertaking the subsidy layering review responsibilities. DHCD will complete the subsidy layering review for applicable projects after the sponsor and HUD submit relevant documentation for review. This information includes the results of HUD's underwriting analysis,

the sponsor's proposed development costs, and information concerning any syndication of the project. Specific documentation required by DHCD includes those items referenced in HUD's guidelines and implementing instructions.

HUD has established safe harbor and ceiling standards for specific project costs. When evaluating projects under HUD's guidelines, DHCD may apply the safe harbor standards unless sponsors can show that projects meet certain criteria making them eligible for the increased ceiling standards. To be considered for the higher ceiling standards, projects must meet at least one of the criteria outlined below:

1. Small Projects - Defined as projects that contain less than 30 residential rental units.
2. High Risk - Defined as projects that involve adaptive re-use or require extraordinarily challenging substantial rehabilitation or provide more than 50% of units for tenants with annual income of 50% or less of the area median.

The subsidy layering reviews for projects will occur after completion of HUD's and DHCD's underwriting. If required under the guidelines, the subsidy layering review will be completed again at the time the project is placed in service.

## **RESERVATIONS**

The Reservation is a conditional commitment of LIHTC and, therefore, does not meet the definition of a binding allocation as stated in Section 42 of the IRC. Once the conditions of the Reservation Agreement have been met, the sponsor will receive a binding allocation agreement that meets all requirements as set forth in Section 42 of the IRC. Reservations will be made based on DHCD's rating and ranking of the projects based on the project selection criteria and the availability of resources, both LIHTC and other funding requested. Reservation of LIHTC Letters will be issued, by DHCD's Director, to the highest rated applicants.

**Surplus Reservations** - In the event that the supply of LIHTC, in a given year, exceeds the demand for same in the initial round, then those Surplus Credits may, at the sole discretion of the Director, be reserved in the following order of priority, without the need for an advertised competitive round. (1) Surplus LIHTC may be allocated to a project(s) that received a reservation from a prior year LIHTC and the project(s) has sufficient eligible basis to qualify for additional credit and the project needs additional credit in order to complete the project's funding in a manner that creates financial feasibility and economic vitality. (2) Surplus LIHTC may be reserved for projects that are in a high state of readiness and have sufficient eligible basis and the project needs LIHTC in order to complete the project's funding in a manner that creates financial feasibility and economic vitality. (3) Surplus LIHTC may be reserved for projects that have sufficient eligible basis and the project is located in a strategic development zone as defined in the (GPM) and the project needs LIHTC in order to complete the project's funding in a manner that creates financial feasibility and economic vitality.

**Forward Reservation** - Under certain conditions a project may be eligible to receive a Reservation of LIHTC from the District's Per-Capita Credit ceiling for future years (known as a Forward Reservation). To receive a Forward Reservation, project sponsors must agree to comply with all conditions imposed by DHCD and the IRS. The following types of projects may receive Forward Reservations from future years' LIHTC ceiling.

**Projects Unable to Meet Deadlines** - Are project(s) that have already received Reservations and are not able to meet time schedules of the Reservation and such projects are deemed by the Director to be essential to DHCD's strategic plan or mission. In this event the previous Reservation may be voided and, at the sole discretion of the Director, a Reservation from future years may be substituted for the LIHTC reserved under the voided Reservation.

**Insufficient LIHTC** - A Forward Reservation may be approved for a project that ranked high enough in a round of competition for an award, but for which there is insufficient remaining LIHTC that can be allocated in the current year.

**Multiple Year Reservations** - Where projects require more than \$400,000 of annual LIHTC and/or reservations would be more appropriately staged over two or more years, DHCD may agree to reserve, subject to availability, credits from a future year(s). DHCD will determine if the benefits to the District are sufficient to warrant the issuance of a Forward Reservation. In most cases this determination will rely most heavily on the following factors: (1) the sponsors' request for LIHTC is large enough so as to eliminate the availability of LIHTC to other competitive applicants, and (2) the scope of the rehabilitation or construction is such that it is unlikely that the entire project can be "placed in service" within the time constraints imposed under the IRC.

## **ALLOCATIONS**

Sponsors who meet the requirements of the Reservation Agreement shall receive binding allocation agreements that meet all qualifications required under Section 42 of the IRC. To qualify for a Carryover-Allocation, sponsors must incur more than 10% of the reasonably anticipated basis by the close of the calendar year in which the allocation is made and then place the project in service within two years of the date of the binding allocation. Failure to meet these requirements will result in the loss of the LIHTC for the project.

Reservation Agreements will identify a date certain by which sponsors must certify that projects have been placed in service or, at a minimum, that more than 10% of the reasonably anticipated basis has been incurred. If sponsors have not met either of these requirements, then the Reservation may be cancelled. Any LIHTC available from cancelled reservations will be awarded to other projects or carried forward in the District's unallocated pool.

**Carryover Allocation Evaluation** - Sponsors that have received a LIHTC reservation that have also incurred more than 10% of the reasonably anticipated basis must submit an application for a

Carryover Allocation from DHCD. To issue the Carryover Allocation, DHCD must receive documentation and certification concerning the costs incurred, evidence that all application and reservation fees have been paid. Sponsors must submit a third party attorney's or certified public accountant's certification, acceptable to the DHCD, which includes an itemization of the project's reasonably expected basis and the costs incurred. The application must include evidence that the restrictive covenant has been recorded and the check for the allocation fee must be included.

**Placed-in-Service Evaluation** - At the time buildings are placed in service DHCD will undertake its final evaluation of the project to determine the amount of LIHTC needed to make developments feasible. Only the amount needed for financial feasibility and economic viability will be awarded. Any additional LIHTC previously allocated to projects, above and beyond this amount, will be recaptured.

Before the IRS Form 8609 is issued, DHCD must receive, review and approve the documentation specified below.

1. **Date Project Placed in Service** - Occupancy permits or other evidence of completion satisfactory to DHCD for each building within the project.
2. **Cost Certification** - A cost certification prepared by the sponsor's attorney or accountant detailing the total uses of funds and total sources of funds. (For projects insured by the Federal Housing Administration ("FHA"), the federal cost certification may be substituted if it includes the total sources and uses of funds for the project.)
3. **Eligible Basis** - A statement of the computation of the Project's eligible basis per residential building.
4. **Limited Partnership Agreement** - A copy of the executed limited partnership agreement including all attachments and exhibits executed by all parties to the agreement.
5. **Extended Use Covenant** - A copy of the extended use covenant with evidence that it has been recorded.
6. **Allocation Fee** - The appropriate Allocation fee as described above.

## **MONITORING FOR COMPLIANCE**

Owners are responsible for making sure that their LIHTC projects comply with all federal requirements. DHCD is responsible for monitoring each project to make sure that owners comply with the LIHTC provisions. The compliance period is for 15 years beginning with the first taxable year of the building's credit period and is extended for an additional 15-year period by the restrictive covenant for a total of thirty years. Procedures have been established by DHCD to

monitor for compliance that includes provisions for record keeping and retention, certification and review, inspection, and notification of non-compliance. These procedures are provided in detail in the DHCD LIHTC Compliance Manual (CM).

**Record Keeping and Retention** For each qualified low income building in the project, Owners must maintain records that provide specific information for each year of the compliance period. The failure to maintain these records or otherwise comply with the requirements as set forth in the CM may result in the issuance of Form 8823 and the eventual recapture of Tax Credits. All applicants are urged to review the CM and to require that project property managers have a thorough knowledge of the requirements under the IRC and the CM.

**Notification of Noncompliance** - DHCD will promptly notify project owners in writing in the event that our monitoring reveals that the project is in noncompliance. This notice will provide a cure period of up to 90 days from the date of the notice during which time the owner must cause the project to come into compliance. Failure to cure a condition of noncompliance may result in recapture of the LIHTC. All incidents of noncompliance must be reported to the IRS on form 8823 notwithstanding the resolution of compliance issues. For good cause, 'DHCD may grant an extension of the cure period for up to an additional six months.

## DEFINITIONS

The following capitalized terms shall have the meanings set forth herein unless context clearly requires a different meaning.

1. **Accessibility** means buildings used by the public, accessible to, and functional for, the physically handicapped, to, through and within their doors, without loss of function, space, or facility where the general public is concerned.
2. **An Accessible Route** means a continuous unobstructed path connecting all accessible elements and spaces in a building or facility that can be negotiated by a severely disabled person using a wheelchair and that is also safe for and usable by people with other disabilities. **Interior Accessible Routes** may include corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures. **Exterior Accessible Routes** may include parking, access aisles, curb ramps, walks, ramps and lifts.
3. **Affiliate** means a corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with any other person, and specifically shall include parents or subsidiaries.
4. **Applicable Fraction** means the fraction used to determine the Qualified Basis of the qualified low-income building, which is the smaller of the unit fraction or the floor space fraction, as defined more fully in IRC Section 42(c)(1).

5. **Applicable Percentage** means the percentage multiplied by the Project's Qualified Basis to determine the annual Tax Credit available to the Ownership Entity for each year of the Tax Credit Period and as more fully described in IRC Section 42(b).
6. **Application or Application Package** means those forms and instructions prepared by DHCD to make a determination to allocate Tax Credits. Developers are required to use the forms contained in the Application Package. The Application must include all information required by the QAP and as may be subsequently required by DHCD.
7. **Area Median Gross Income (AMGI)** means the most current tenant income requirements published by HUD pursuant to the qualified Low-Income Housing Project requirements of IRC Section 42(g).
8. **Builder General Requirements** means items, which will vary due to Project type, location and site conditions. This category generally includes but is not limited to supervision, job site engineering, job office expenses including clerical wages, whether on site or off site, (if for the Project,) temporary buildings, tool sheds, shops and toilets, temporary heat, water, light and power for construction, temporary walkways, fences, roads, siding and docking facilities, sidewalk and street rental, construction equipment rental (not in individual trade item costs,) clean-up and disposal of construction debris, medical and first aid supplies and temporary facilities, watchman's wages, security cost and theft and vandalism insurance signage or other barriers.
9. **Builder Overhead** means the cost of continuing operations of a building construction firm.
10. **Builder Profit** means the return anticipated for providing building construction services under competitive conditions taking into consideration on-site construction time, work performed by the builder, number of subcontractors and extent of subcontract work and risk and responsibility.
11. **Carryover Agreement and Allocation and Ownership Entity's election statement** means an allocation of current year Tax Credit Reservations by DHCD pursuant to IRC Section 42(h)(1)(E) and Treasury Regulations § 1.42-6 and the Carryover Agreement and Carryover Application filed by an Owner Entity.
12. **Code or IRC** means the Internal Revenue Code of 1986 as amended together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the United States Department of the Treasury or the Internal Revenue Service relating to the Low-Income Housing Tax Credit Program authorized by IRC Section 42. These documents are incorporated in the QAP by reference. A copy of the Internal Revenue Code and Treasury regulations and related

information relating to this program are found in the District of Columbia Public Library and are available for review by the public.

13. **Compliance Period**, as defined in IRC Section 42(i)(1) as amended to January 1, 1986, means, with respect to any building, the period of 15 consecutive taxable years beginning with the first taxable year of the Tax Credit Period unless extended by the Owner Entity to a longer period of time.
14. **Consultant fee** means a fee paid to a housing consultant. No entity having an identity of interest with the Developer may earn a fee for providing services that would otherwise be provided on a fee basis by housing consultant. Consultant efforts must be directed exclusively towards serving the specific Project being proposed.
15. **Control** (including the terms Controlling, Controlled by, under common Control with, or some variation or combination of all three) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any Person or Affiliate thereof, whether through the ownership of voting securities, by contract or otherwise, including specifically ownership of more than 50 percent of the general partner interest in a limited partnership, or designation as a managing general partner or the managing member of a limited liability company.
16. **Debt Service Coverage Ratio** means the ratio of a property's net operating income (rental income less operating expenses and reserve payments) to foreclosable, currently amortizing debt service obligations.
17. **Developer**
  - a. The Developer is the party acting as agent for the eventual owner or taxpayer benefiting from an award of a Tax Credit Reservation.
  - b. The Developer and any of its successors in interest will be bound by the representations made in the Application. Further, the Developer or its successors shall be obligated to carry out the commitments made to DHCD by the Sponsor on its own behalf or on behalf of other Persons or Affiliates.
18. **Developer's Equity** means Developer's contributions of cash and land, but does not include Developer's Fee or Syndication proceeds. Developer's Equity will only be considered if the equity remains in the Project throughout the Compliance Period and not taken out from surplus cash flow, cash flow notes or mortgages or any other method.
19. **Difficult Development Area** means any area that is so designated by the Secretary of HUD as an area which has high construction, land, and utility costs relative to area median family income.

20. **Eligible Basis** means, with respect to a building within a Project, the building's Eligible Basis at the close of the first taxable year of the Tax Credit Period and as further defined in IRC Section 42(d).

21. **Eligible Basis** shall not include garages or storage units or other amenities where the Ownership Entity is charging tenants for the use of the garage or storage unit or other amenities, except when the garage or storage units or other amenities are part of normal rent for all of the units in the Project.

If a grant is made with respect to any building or its operation during any taxable year of the Compliance Period and any portion of such grant is funded with federal funds, the Eligible Basis of the building for that taxable year and all succeeding taxable years must be reduced by the portion of the grant.

22. **Eligible Basis for Rehabilitation Project** includes the definition of Eligible Basis with the adjustments described in this Section. No Tax Credit is available for acquisition of an existing building unless:

- a. The building is acquired by purchase;
- b. Subject to limited exceptions, at least ten years has elapsed since the building was last placed in service or if more recent the date of certain improvements costing at least 25% of the Ownership Entity's adjusted basis in the building;
- c. The building was not previously placed in service by a related person to the current Ownership Entity. For the purposes of this paragraph "related person" shall have the same meaning as Section 42(d)(2)(D)(iii); and
- d. The used building is rehabilitated in a manner which is eligible for Tax Credit.

23. **Enterprise Community** is as defined by HUD.

24. **Evaluator** means members of DHCD Staff, temporary staff hired to evaluate the Tax Credit Applications, or staff from other District of Columbia agencies.

25. **Forward Funding** shall have the same meaning as described in IRC Section 42(b)(2)(A)(ii)(I) and 42(h)(1)(C).

26. **Frail Older Person** means an Older Person requiring assistance with three or more activities of daily living. Also see **Tenants with Special Housing Needs** in this Glossary.

27. **Housing Projects for Older Persons** shall have the same meaning as described in 42 U.S.C. Section 3607(b)(2).



28. **Hard Construction Costs** mean the following items: Site improvements or work, New construction, Accessory buildings, Garages, General Requirements, Trade Items (Building materials), Construction contingency, Builder's overhead, Builder's Profit, Bond Premium, Other Fees, Architect's and Engineering Fees—Design, Architect's and Engineering Fees—Supervisory, Rehabilitation.
29. **Housing Credit Agency** means District of Columbia Department of Housing and Community Development ("DHCD"). Pursuant Mayor's Order 87-72, DHCD is charged with the responsibility of allocating Tax Credits pursuant to IRC Section 42(h)(8)(A).
30. **HUD** means the United States Department of Housing and Urban Development, or its successor.
31. **Identity of Interest** means a financial, familial or business relationship that permits less than an arm's length transactions. No matter how many transactions are made subsequently between persons, corporations, or trusts Controlled by the Ownership Entity/Developer, these subsequent transactions shall not be considered "arm's-length". Identity of interest includes but is not limited to the following: the existence of a reimbursement program or exchange of funds; common financial interests; common officers, directors or stockholders; family relationships among the officers, directors or stockholders; the entity is Controlled by the same group of corporations; a partnership and each of its partners; a limited liability company and each of its members; or an S Corporation and each of its of its shareholders.
32. **In-fill Lot** means land that has been platted and subdivided, and must have been previously improved.
33. **IRS** means the Internal Revenue Service, or its successor.
34. **Integrated Setting** means mixed population housing that is integrated "in the community" rather than in certain buildings.
35. **Land Use Restrictive Covenants a/k/a District of Columbia Department of Housing and Community Development Indenture of Restrictive Covenants for Low-Income Housing Tax Credits (Restrictive Covenants)** means an agreement between DHCD and the Ownership Entity and all of its successors in interest where the parties agree that the Project will be an affordable housing Project for the length of the Compliance Period elected by the Ownership Entity and upon which the award of Tax Credits was in part, based. The Restrictive Covenants will contain language that must encumber the land where the Project is located for the life of the agreement. The Restrictive Covenants must conform to the requirements of IRC Section 42(h), and the QAP.

36. **Low-Income Unit** means any residential rental unit if such unit is rent-restricted and the occupant's income meets the limitations applicable as required for a qualified low-income housing Project.
37. **Metropolitan Statistical Area (MSA)** means a central city containing at least 50,000 people with a total metropolitan population of at least 100,000 as defined by the U.S. Census Bureau.
38. **Older Persons** means a person 55 years of age or older, in accordance with District of Columbia law.
39. **Ownership Entity** means any Person and any Affiliate of such Person:
- a. Submitting an Application to DHCD requesting a Tax Credit Reservation pursuant to this QAP.
  - b. Who receives a Tax Credit Reservation, Carryover Agreement or 8609 Tax Credit Allocation.
  - c. Who is the successor in interest to the Developer who owns or intends to own and develop a Project or expects to acquire Control of a Project consistent with Control documents provided by the Ownership Entity to DHCD as part of the Application.
40. **People with Disabilities or Disability** The term “disability” means, with respect to an individual (A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual (B) a record of such an impairment; or (C) being regarded as having such impairment.
41. **Project** means a low-income rental housing property the Developer of which represents that it is or will be a qualified low-income housing Project within the meaning of IRC Section 42(g). With regard to this definition, the Project is that property which is the basis for the Application.
42. **Property** means the real estate and all improvements thereon which are the subject of the Application, including all items of personal property affixed or related thereto, whether currently existing or proposed to be built thereon in connection with the Application.
43. **Qualified Allocation Plan (QAP)** means a plan to select and award Tax Credits to qualified recipients.
44. **Qualified Basis** means, with respect to a building within a Project, the building's Eligible Basis multiplied by the Applicable Fraction, within the meaning of IRC Section 42(c)(1).
45. **Qualified Census Tract** means any census tract which is so designated by the Secretary

of HUD and, for the most recent year for which census data are available on household income in such tract, either in which 50 percent or more of the households have an income which is less than 60 percent of the adjusted gross median income for such year or which has a poverty rate of at least 25 percent.

46. **Qualified Non-profit Organization or Non-profit** means an organization that is described in IRC Section 501(c)(3) or (4), that is exempt from federal income taxation under IRC Section 501(a), that is not affiliated with or Controlled by a for profit organization, and includes as one of its exempt purposes the fostering of low-income housing within the meaning of IRC Section 42(h)(5)(C) and is allowed by law or otherwise to hold and develop property.
47. **Qualified Non-profit Project** means a Project in which a qualified Non-profit organization has Control (directly or through a partnership or wholly owned subsidiary as defined in IRC Section 42(h)(5)(D)(ii)) and materially participates (within the meaning of IRC Section 469(h)) in its development and operation throughout the Compliance Period.
48. **Qualified Residential Rental Property** shall have the same meaning as defined in IRC Section 103.
49. **Real Estate Owned (REO) Projects** means any existing residential development that is owned or that is being sold by an insured depository institution in default, or by a receiver or conservator of such an institution, or is a property owned by HUD, Federal National Mortgage Association (Fannie Mae), Federal Home Loan Mortgage Corporation (Freddie Mac), a federally chartered bank, a savings bank, a savings and loan association, the Federal Home Loan Bank (FHLB), a federally approved mortgage company or any other federal agency.
50. **Recovered Tax Credits** means either Tax Credits previously awarded to a Project or Projects that cannot use all the Tax Credits the Project was awarded or Tax Credits from Projects that cannot be placed in service by the Developer/Ownership Entity.
51. **Rehabilitation Expenditure** means depreciable expenditures, which are for Property or improvements that are chargeable to the capital account and which are incurred in connection with the rehabilitation of a building. Rehabilitation Expenditures are not eligible for Tax Credits unless the expenditures are allocable to or substantially benefit one or more Low- Income Units and the amount of such expenditures during any twenty-four month period selected by the Developer is at least the greater of 10 percent of the Developer's adjusted basis of the building at the start of the twenty-four month period, or \$6,000 per unit. See also, IRC Section 42(e)(2).
52. **Single Family** means a single-family residence whether detached or vertically attached, including a town-home, duplex, triplex or fourplex.

53. **State Ceiling** means the limitation imposed by IRC Section 42(h) on the aggregate amount of Tax Credit allocations that may be made by DHCD during any calendar year, as determined from time to time by DHCD in accordance with IRC Section 42(h)(3).
54. **Tax Credit** means the Low-Income Housing Tax Credits issued pursuant to the program, IRC Section 42 and Chapter 42 of Title 10 DCMR. Tax Credits are determined under IRC Section 42(a) for any taxable year in the Tax Credit Period equal to the amount of the Applicable Percentage of the qualified basis for each qualified low-income building.
55. **Tax Credit Allocation or Reservation** amount means, with respect to a Project or a building within a Project, the amount of Tax Credit DHCD allocates to a Project and determines to be necessary for the financial feasibility of the Project and its viability as a qualified low-income housing Project throughout the Compliance Period.
56. **Tax Credit Period** means, with respect to a building within a Project, the period of ten taxable years beginning with the taxable year the building is placed in service or, at the election of the Ownership Entity the succeeding taxable year, as more fully defined in IRC Section 42(f)(1).
57. **Tenants with Special Housing Needs** means affordable, supportive housing for People with Disabilities, Older Persons or Frail Older Person, certified Assisted Living, Transitional Housing for the homeless, or housing for families participating in organized programs to achieve economic self-sufficiency.
58. **Total Project Cost** means the total costs reflected in the Application.
59. **Transitional Housing** means a unit that contains sleeping accommodations, a kitchen and bathroom facilities and is located in a building which is used exclusively to facilitate the transition of homeless individuals to independent living with 24 months and in which a Governmental Entity or qualified Non-profit organization provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing.
60. **Unallocated or Unreserved Tax Credits** means Tax Credits that were not awarded by DHCD during its most recent round of allocation or are returned to DHCD during the current year. These Tax Credits would be eligible for redistribution in accordance with the rules of DHCD or may be carried forwarded to the next year's allocation cycle.
61. **Utilities** mean oil, gas, electricity, water and sewer service.

DRAFT 10-23-03

## FOR MORE INFORMATION

Contact the following address for applications or for additional information:

District of Columbia  
Department of Housing and Community Development  
801 North Capitol Street N.E., 2<sup>nd</sup> Floor  
Washington, D.C. 20002  
Telephone # (202) 442-7280

APPROVED:

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Title: Stanley Jackson, Director

**Exhibit 1 - Tax Credit Fee Schedule**

	<b>DHCD Current</b>		<b>DHCD Proposed</b>	
	Non-Profit	For-Profit	Non-Profit	For-Profit
Application Fee	\$ 200	\$ 500	\$ 200	\$ 500
Reservation Fee	1%	2%	1%	2%
Allocation Fee	1%	1%	1% a)	1% a)
Monitoring Fee	N/A	N/A	\$ 25 per Unit Per Year	\$ 25 per Unit Per Year
a) The Allocation Fee Percentage Will Be Applied to the Total Ten Year Allocation				

<b>DCHFA Tax Credit Fee Schedule</b>	
Application Fee	0.1% of bond amount
Reservation Fee	N/A (included in fee)
Allocation Fee	6% of annual LIHTC allocation
Monitoring Fee	40-50 bps on outstanding principal amount of bonds (included in the mortgage rate)